

	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. 5:90CV1704
	)	
	)	JUDGE ALDRICH
v.	)	
	)	
SUMMIT EQUIPMENT & SUPPLIES, INC.,	)	
et al.,	)	
	)	
Defendants.	)	
	)	
	)	

## CONSENT DECREE WITH ALLEGED GENERATOR DEFENDANTS

## TABLE OF CONTENTS

I.	<u>BACKGROUND</u> .....	1
II.	<u>JURISDICTION</u> .....	2
III.	<u>PARTIES BOUND</u> .....	3
IV.	<u>DEFINITIONS</u> .....	3
V.	<u>STATEMENT OF PURPOSE</u> .....	4
VI.	<u>PAYMENT OF RESPONSE COSTS</u> .....	5
VII.	<u>FAILURE TO COMPLY WITH CONSENT DECREE</u> .....	6
VIII.	<u>COVENANT BY PLAINTIFF</u> .....	8
IX.	<u>RESERVATION OF RIGHTS BY UNITED STATES</u> .....	9
X.	<u>COVENANT NOT TO SUE BY SETTLING DEFENDANTS</u> .....	11
XI.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u> .....	11
XII.	<u>RETENTION OF RECORDS</u> .....	13
XIII.	<u>NOTICES AND SUBMISSIONS</u> .....	14
XIV.	<u>RETENTION OF JURISDICTION</u> .....	18
XV.	<u>INTEGRATION/APPENDICES</u> .....	18
XVI.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u> .....	19
XVII.	<u>SIGNATORIES/SERVICE</u> .....	19
XVIII.	<u>FINAL JUDGMENT</u> .....	20

## **I. BACKGROUND**

A. In September 1990, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Summit Equipment & Supplies, Inc., Superfund site in Akron, Ohio ("the Site"). Pursuant to Section 107 of CERCLA, the United States is also filing an Amended Complaint with a Motion for Leave to Amend, concurrently with the lodging of this Consent Decree. The alleged generators that have entered into this Consent Decree ("Settling Defendants") are named in either the United States' original Complaint or proposed Amended Complaint.

B. From the 1950s to the mid-1980s, the Site owners and operators, Mr. Benjamin J. Hirsch and Summit Equipment & Supplies, Inc., engaged in the purchase and salvage of used electrical and other industrial equipment, such as motors, transformers, lead cables, car batteries and munitions shells, in order to salvage their metal components. These activities resulted in the soils and groundwater at the Site being widely contaminated with polychlorinated biphenyls ("PCBs") and heavy metals, among other hazardous substances.

C. In an emergency removal action in 1987, EPA addressed the on-site and off-site threat from PCBs through site stabilization, namely, off-site disposal of 1,282 empty transformer casings and 286 empty capacitors, and incineration of 825 gallons of PCB oil. Additional studies by EPA confirmed that the soils at the Site were heavily contaminated with PCBs and that heavy metals (lead, cadmium, mercury, zinc and copper) represented another significant contaminant to be addressed. In May 1991, EPA suspended removal activities after uncovering military ordnance.

D. In July 1991, pursuant to Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606, EPA and the Defense Logistics Agency ("DLA" or "Settling Federal Agency"), as a potentially responsible party, entered into an Administrative Order by Consent ("AOC"), which required DLA to complete the remaining response actions at the Site.

E. In July 1992, the United States' Motion for Summary Judgment on liability was granted against Mr. Benjamin J. Hirsch and Summit Equipment & Supplies, Inc., as "owners and operators" of the Site under Section 107(a)(1) of CERCLA, and against three Settling Defendants as generators that "arranged for disposal" of hazardous substances under Section 107(a)(3) of CERCLA. *See* 805 F. Supp. 1422 (N.D. Ohio 1992).

F. In June 1998, EPA issued the Record of Decision ("ROD") for the Site, which identified the principal threats as PCBs in the soil, and chromium and volatile organic compounds ("VOCs") in the groundwater at the Site. Under the ROD, the remedial action for

the soils at the Site required: (1) excavation and off-site disposal of soils contaminated with PCBs, as well as copper and mercury, until remedial goals were met; and (2) removal of unexploded ordnance. The groundwater remedial action at the Site required monitored natural attenuation of groundwater, for possibly 30 years, until remedial goals were met.

G. In November 2000, DLA completed the soil remediation required under the ROD after excavating for off-site disposal more than 65,000 tons of soil. After DLA issued its final soil remediation report, EPA found that the soil remediation for the Site was successfully completed and closed out this aspect of the remedy in August 2002.

H. In August 2003, EPA issued its first Five-Year Review Site Report to assess whether remaining remedial actions being implemented at the Site are protective of human health and the environment. Based upon groundwater monitoring results, the Report indicated that virtually all hazardous substances of concern have fallen below their remedial goals. Thus, natural attenuation of substances of concern in the groundwater at the Site is occurring. In just two monitoring wells, some VOCs are still being detected above their respective Maximum Contaminant Levels ("MCLs"). However, VOCs are not being detected above respective MCLs in the wells that are downgradient, indicating that VOCs are not migrating off-site at significant concentrations that pose a risk to human health or the environment. Accordingly, the groundwater remedy is being implemented successfully at the Site.

I. Settling Defendants do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaints. Settling Federal Agency does not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by any of the Settling Defendants.

J. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

(a). "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

(b). "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

(c). "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

(d). "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

(e). "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

(f). "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

(g). "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

(h). "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

(i). "Parties" shall mean the United States, the Settling Defendants, and the Settling Federal Agency.

(j). "Plaintiff" shall mean the United States.

(k). "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

(l). "Settling Defendants" shall mean those parties identified in Section XIII (Notices and Submissions) and in Appendix A.

(m). "Settling Federal Agency" shall mean the Defense Logistics Agency ("DLA"), an agency within the United States Department of Defense, and any other entity of the United States allegedly responsible for activities giving rise to allegations of liability at the Site, which are resolving any claims that have been or could be asserted against the United States with regard to this Site, as provided in the Consent Decree.

(n). "Site" shall mean the Summit Equipment & Supplies, Inc. Superfund Site, encompassing approximately 6 acres, located at north of 875 Ivor Avenue, approximately one-half mile south of I-76 and the I-277/State Route 224 interchange in the southwest portion of Akron, Ohio, and generally shown on the map included in Appendix B.

(o). "United States" shall mean the United States of America, including all of its departments, agencies and instrumentalities, which includes without limitation EPA, the Settling Federal Agency and any federal natural resources trustee.

## **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for each Settling Defendant and the Settling Federal Agency to make a cash payment, to address their alleged liability for the Site as provided in the Covenants by Plaintiff in Section VIII, and subject to the Reservations of Rights by the United States in Section IX. The Settling Defendants' cash payments includes a premium added to the cost estimate to conduct future Site work in order to account for potential cost over-runs in performing the remaining response actions at the Site.

## **VI. PAYMENT OF RESPONSE COSTS**

5. Within 30 days of entry of this Consent Decree, each Settling Defendant shall pay to the EPA the amount set forth for that Settling Defendant in Appendix A under the Column "Total Payment Amount Due Within 30 Days of Entry"; except for the City of Cleveland, Ohio, which shall pay to the EPA the amount set forth for it in Appendix A under the Column "Total Payment Amount Due Within 30 Days of Entry," within 45 days of entry of this Consent Decree.

6. Payments by Settling Defendants shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 1990 V02312, the EPA Region and Site Spill ID Number 05-8A, and DOJ Case Number 90-11-3-633. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Ohio following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. At the time of payment, each Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions) and to:

Financial Management Officer  
U.S. Environmental Protection Agency - Region 5  
Mail Code MF 10-J  
77 West Jackson Boulevard  
Chicago, IL 60604

8. Of the total amount to be paid by each Settling Defendant pursuant to Paragraph 5 and Appendix A of this Consent Decree:

(a). the sum that is listed in Appendix A for each Settling Defendant under the Column "EPA Superfund" shall be paid and deposited in the EPA Hazardous Substance Superfund (and in the same FedWire Electronic Funds Transfer with any applicable payment pursuant to Paragraph 16.4); and

(b). the sum that is listed in Appendix A for each Settling Defendant under the Column "Summit Special Account" shall be paid and deposited, through a separate FedWire Electronic Funds Transfer, in the Summit Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

8.1 As soon as reasonably practicable after the date of entry of this Consent Decree, and consistent with Paragraph 8.1(a)(iii), the United States, on behalf of the Settling Federal Agency, shall:

(a)(i). Pay to the EPA \$1,479,000.

(a)(ii). The total amount to be paid pursuant to Paragraph 8.1 shall be deposited in the EPA Hazardous Substance Superfund.

(a)(iii). If the payment to the EPA required by this Paragraph 8.1(a)(i) is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the date of entry of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

8.2. In the event the payment required by Paragraph 8.1 is not made within 30 days of the date of entry of this Consent Decree, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Interest shall commence 30 days from the date of entry of this Consent Decree and continue to accrue through the date of the payment.

8.3. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agency under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

## **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

9. Interest on Late Payments. If any Settling Defendant fails to make any payment pursuant to Paragraph 5 and Appendix A, within 30 days of the date of entry of this Consent Decree, then Interest on the unpaid balance owed by that Settling Defendant shall commence 30 days from the date of entry of this Consent Decree and continue to accrue through the date of payment.

9.1. If the City of Cleveland, Ohio, fails to make any payment pursuant to Paragraph 5 and Appendix A, within 45 days of the date of entry of this Consent Decree, then Interest on the unpaid balance shall commence 30 days from the date of entry of this Consent Decree and continue to accrue through the date of the payment.

10. Stipulated Penalty.

(a). If any amounts due pursuant to Paragraph 5 and Appendix A, are not paid by the required due date, the Settling Defendant(s) that failed to make such payment shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraphs 9 and 9.1, \$500 per violation per day that such payment is late.

(b). Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number 05-8A, and DOJ Case Number 90-11-3-633, and shall be sent to:

U.S. Environmental Protection Agency - Region 5  
Superfund Accounting  
P.O. Box 70753  
Chicago, IL 60673

(c). At the time of each payment, Settling Defendant(s) shall send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions) and to:

Financial Management Officer  
U.S. Environmental Protection Agency - Region 5  
Mail Code MF 10-J  
77 West Jackson Boulevard  
Chicago, IL 60604

(d). Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree against any Settling Defendant(s), that (those) Settling Defendant(s) shall reimburse the United States for all costs of such action, including, but not limited to, costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of a Settling Defendant's failure to comply with the requirements of this Consent Decree.

13. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are several. Each Settling Defendant is solely responsible for making the payments required of that Settling Defendant and for complying with all other obligations placed on that Settling Defendant by the Consent Decree.

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

### **VIII. COVENANT BY PLAINTIFF**

15. Covenant Not to Sue Settling Defendants by United States. In consideration of the payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Settling Defendant upon receipt by EPA of all payments required of that Settling Defendant by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). With respect to each Settling Defendant, individually, this covenant not to sue is conditioned upon that Settling Defendant's satisfactory performance of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person; provided however, that this covenant not to sue shall also apply to Settling Defendants' successors and assigns, but only to the extent that any such successor's or assign's liability with respect to the Site is derived from its status as a successor or assign to a Settling Defendant.

15.1. Covenant for Settling Federal Agency by EPA. In consideration of the payment that will be made on behalf of the Settling Federal Agency under the terms of this Consent Decree, and except as specifically provided in Section IX (Reservation of Rights by United States), EPA covenants not to take administrative action against Settling Federal Agency pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect for Settling Federal Agency upon receipt by EPA of all payments required of Settling Federal Agency by Section VI (Payment of Response Costs). This covenant is conditioned upon the satisfactory performance by Settling Federal Agency of its obligations under this Consent Decree. This covenant extends only to Settling Federal Agency and does not extend to any other person.

## **IX. RESERVATION OF RIGHTS BY UNITED STATES**

16.1. General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant by the United States in Paragraph 15; and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agency with respect to all matters not expressly included within the Covenant by EPA in Paragraph 15.1. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against each Settling Defendant, individually, and EPA and the federal natural resource trustees reserve all rights against Settling Federal Agency, with respect to:

(a). liability of any Settling Defendant or Settling Federal Agency for failure by that Settling Defendant or Settling Federal Agency to meet a requirement of this Consent Decree;

(b). criminal liability;

(c). liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(d). liability, based upon any Settling Defendant's or Settling Federal Agency's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by such Settling Defendant(s) or by Settling Federal Agency; and

(e). liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

16.2. United States' Post-Lodging Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel each Settling Defendant, except those described in Paragraph 16.4, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agency:

- (a). to perform further response actions relating to the Site, or
- (b). to reimburse the United States for additional costs of response if, subsequent to the date of lodging of the Consent Decree:
  - (i) conditions at the Site, previously unknown to EPA, are discovered, or
  - (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

16.3. For purposes of Paragraph 16.2, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Consent Decree and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA prior to the lodging of this Consent Decree.

16.4. The United States' reservations, set forth in Paragraph 16.2, shall not apply to those Settling Defendants whose total payment, identified in Appendix A under the Column "Total Payment Amount Due Within 30 days of Entry," includes a specific payment under the Column "Premium Payment to Cover Risks from Unknown Conditions" as part of the total payment. The payment specified in Appendix A under the Column "Premium Payment to Cover Risks from Unknown Conditions" shall be paid and deposited in the EPA Hazardous Substance Superfund, through the same FedWire Electronic Funds Transfer with the amount to be paid and deposited in the EPA Hazardous Substance Superfund from Appendix A under the Column "EPA Superfund," as set forth in Paragraph 8(a). The amount and toxic or hazardous effect of the hazardous substances contributed to the Site by the Settling Defendants paying the premium described in this paragraph are minimal in comparison to the total volume of waste disposed at the Site and the toxic or hazardous effect of other hazardous substances at the Site.

## **X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

17. Covenants by Settling Defendants. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

(a). any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

(b). any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

(c). any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 19 (Waiver of Claims) and Paragraph 23 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 16.1 (c) - (e) and Paragraph 16.2, but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

19. Settling Defendants agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

## **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

20. Except as provided in Paragraph 19, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 19, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

21. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants and Settling Federal Agency are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

22. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

23. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant by Plaintiff set forth in Section VIII.

24. In consideration of the past response actions satisfactorily completed by Settling Federal Agency at the Site and the payment that will be made on behalf of Settling Federal Agency under the terms of this Consent Decree, EPA and Settling Federal Agency agree that the July 1991 Administrative Order by Consent (Docket No. V-W-91-C-108) entered into between EPA and Settling Federal Agency (DLA), pursuant to Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606, is terminated upon entry of this Consent Decree, and the provisions of that Administrative Order shall be deemed satisfied. No further written notice from EPA to Settling Federal Agency shall be necessary to memorialize that EPA has terminated the Administrative Order by Consent (Docket No. V-W-91-C-108) as of the date of entry of this Consent Decree.

## **XII. RETENTION OF RECORDS**

25. Until 3 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

26. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. A Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

27. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information relating to the Site, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

28. The United States acknowledges that Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has fully complied with any and all EPA requests for information relating to the Site, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

### **XIII. NOTICES AND SUBMISSIONS**

29. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

#### **As to the United States:**

#### **As to DOJ:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-633)  
P.O. Box 7611  
Washington, DC 20044-7611

Chief, Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-633/2)  
P.O. Box 23986  
Washington, DC 20026-3986

#### **As to EPA:**

Assigned Attorney  
Summit Equipment & Supplies, Inc., Site Spill ID Number 05-8A  
U.S. Environmental Protection Agency - Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

#### **As to Settling Defendant ArvinMeritor, Inc., on behalf of the Rockwell Standard Division of Rockwell International Corp.:**

The Corporation Company  
30600 Telegraph Road  
Bingham Farms, MI 48025

As to Settling Defendant Bridgestone/Firestone North American Tire, LLC:

Heidi H. Bumpers, Esq.  
Jones Day  
51 Louisiana Ave., NW  
Washington, DC 20001-2113

As to Settling Defendant Cleveland Steel Container Corp.:

William E. Coughlin, Esq.  
Calfee, Halter & Griswold, LLP  
1400 McDonald Investment Center  
800 Superior Avenue  
Cleveland, OH 44114-2688

As to Settling Defendant Curtiss-Wright Corp., on behalf of itself and its wholly-owned subsidiary, The Marquette Metal Products Co.:

Michael J. Denton  
Vice President, General Counsel and Secretary  
Curtiss-Wright Corporation  
4 Becker Farm Road  
Roseland, NJ 07068

As to Settling Defendant City of Cleveland, Ohio:

Director of Law  
City of Cleveland Department of Law  
601 Lakeside Avenue, Room 106  
Cleveland, OH 44114-1077

As to Settling Defendant Clark Equipment Company:

Aaron Kleinbaum, Esq.  
Clark Equipment Company  
P.O. Box 0445  
155 Chestnut Ridge Road  
Montvale, NJ 07645

As to Settling Defendant CSX Transportation, Inc., a wholly-owned subsidiary of CSX Corp.:

Paul J. Kurzanski  
CSX Transportation  
500 Water Street (J-275)  
Jacksonville, FL 32202

As to Settling Defendant DaimlerChrysler Corp.:

Kathleen M. Hennessey, Esq.  
Office of General Counsel  
DaimlerChrysler Corporation  
1000 Chrysler Drive  
Auburn Hills, MI 48326

As to Settling Defendant Eaton Corp.:

Corporate Secretary  
Eaton Corporation  
1111 Superior Avenue  
Cleveland, OH 44114-2529

As to Settling Defendant GATX Corp:

Vice President and General Counsel  
GATX Corporation  
500 West Monroe Street  
Chicago, IL 60661

As to Settling Defendant General Motors Corp.:

Michelle T. Fisher, Esq.  
General Motors Corporation  
300 Renaissance Center  
MC 482-C24-D24  
Detroit, MI 43265-3000

As to Settling Defendants Giddings & Lewis, LLC, now known as GLH, LLC; G & L USA, LLC;  
and Giddings & Lewis Machine Tools, LLC, on behalf of themselves and the Warner & Swasey  
Division of Bendix Automation Company:

Lawrence C. Paulson  
Assistant General Counsel  
ThyssenKrupp USA, Inc.  
3155 West Big Beaver Road  
P.O. Box 5084  
Troy, Michigan 48007-5084

As to Settling Defendant Honeywell International, Inc., on behalf of Warner Swasey Division of Bendix Automation, Bendix Corp., and Allied Signal, Inc.:

Brian D. Israel, Esq.  
Arnold & Porter, LLP  
555 12<sup>th</sup> Street, NW  
Washington, DC 20004

As to Settling Defendant LaFarge North America Inc., as the successor in interest to General Portland, Inc.:

David W. Carroll, Esq.  
Vice President, Environment  
LaFarge North America Inc.  
12950 Worldgate Drive, Suite 500  
Herndon, VA 20170

As to Settling Defendant Lear Siegler Diversified Holdings, as the successor in interest to Lear Siegler, Inc.:

James F. Matthews  
President  
Lear Siegler Diversified Holdings Corporation  
469 Morris Avenue  
Summit, NJ 07901-1565

As to Settling Defendant McNeil & NRM, Inc.:

Robert A. Nelson  
V.P. Finance  
McNeil & NRM, Inc.  
96 East Crosier Street  
Akron OH 44311

As to Settling Defendant Navistar International Corp.:

David A. Piech, Esq.  
Senior Counsel, Law Department  
International Truck and Engine Corporation  
4201 Winfield Rd  
Warrenville, IL 60555

As to Settling Defendant Owens-Illinois, Inc.:

Heidi Goldstein, Esq.  
Thompson Hine  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1216

As to Settling Defendant Rolls-Royce North America Inc. as the successor in interest to the  
Parson Peebles Electric Co.:

Gregory S. Dunn, Esq.  
Legal Counsel  
Rolls-Royce North America Inc.  
2001 South Tibbs Avenue  
Indianapolis, IN 46241

As to Settling Defendant Spang & Company:

John Englert, Esq.  
Kirkpatrick & Lockhart Nicholson Graham, LLP  
Henry W. Oliver Bldg.  
535 Smithfield Street  
Pittsburgh, PA 15222-2312

As to Settling Defendant Viacom Inc., successor by merger with CBS Corporation f/k/a  
Westinghouse Electric Corporation:

Linda D. Kelley  
Vice President and Senior Counsel  
Viacom Inc.  
11 Stanwix Street, 2nd Floor  
Pittsburgh, PA 15222

**XIV. RETENTION OF JURISDICTION**

30. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XV. INTEGRATION/APPENDICES**

31. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent

Decree: Appendix A (complete list of Settling Defendants and corresponding total payment of response costs) and Appendix B (Map of the Site).

#### **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

32. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

33. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XVII. SIGNATORIES/SERVICE**

34. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

35. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

36. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the United States' Amended Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

**XVIII. FINAL JUDGMENT**

37. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

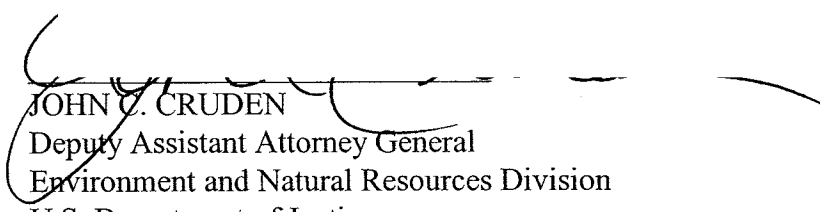
SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR THE UNITED STATES OF AMERICA:

Date: \_\_\_\_\_

  
JOHN C. CRUDEN  
Deputy Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20530

Date: \_\_\_\_\_


\_\_\_\_\_  
MARC BORODIN  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

GREGORY A. WHITE  
United States Attorney for the  
Northern District of Ohio


STEVEN J. PAFFILAS  
Bar Reg. No. 0034376  
Local Counsel  
Assistant United States Attorney  
Carl B. Stokes United States Court House  
801 West Superior Avenue, Suite 400  
Cleveland, OH 44113-1852

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

9/29/05

  
RICK KARL

Director, Superfund Division  
U.S. Environmental Protection Agency - Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

  
THOMAS M. WILLIAMS

Associate Regional Counsel  
U.S. Environmental Protection Agency - Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT ARVINMERITOR, INC., ON  
BEHALF OF THE ROCKWELL STANDARD DIVISION OF  
ROCKWELL INTERNATIONAL CORPORATION

Date: 9/14/05

---

Vernon G. Baker, II, Esq.  
Senior Vice President and General Counsel  
ArvinMeritor Inc.  
2135 West Maple Road  
Troy, MI 48084-7186

Agent Authorized to Accept Service on Behalf of Above-signed Party:

~~CT The Corporation Company~~  
30600 Telegraph Road, Ste. 2345  
Bingham Farms, MI 48025

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT BRIDGESTONE/FIRESTONE NORTH  
AMERICAN TIRE, LLC

Date:

August 25, 2005

Jane A. Johnson  
Manager of Remediation  
Bridgestone Americas Holding Inc.  
535 Marriott Drive  
Nashville, TN 37214

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Heidi H. Bumpers, Esq.  
Jones Day  
51 Louisiana Ave., NW  
Washington, DC 20001-2113

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT CITY OF CLEVELAND, OHIO

Date: 8/26/05

Teresa Beasley, Director of Law  
Department of Law  
City of Cleveland  
601 Lakeside Avenue  
Cleveland, OH 44114-1077

Date: 8/26/05

Approved: \_\_\_\_\_

Julius Ciaccia, Director, Public Utilities  
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Director of Law  
City of Cleveland Department of Law  
601 Lakeside Avenue, Room 106  
Cleveland, OH 44114-1077

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT CLARK EQUIPMENT COMPANY

Date: 9/21/05

\_\_\_\_\_  
Barbara A. Santoro, Esq.  
Secretary  
Clark Equipment Company  
P.O. Box 0445  
155 Chestnut Ridge Road  
Montvale, NJ 07645

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Aaron Kleinbaum, Esq.  
Clark Equipment Company  
P.O. Box 0445  
155 Chestnut Ridge Road  
Montvale, NJ 07645

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT CLEVELAND STEEL CONTAINER CORPORATION

Date: 8-21-05

\_\_\_\_\_  
Dennis Puening  
Vice President  
Cleveland Steel Container Corporation  
1840 Enterprise Parkway  
Twinsburg, OH 44087-2206

Agent Authorized to Accept Service on Behalf of Above-signed Party:

William E. Coughlin, Esq.  
Calfee, Halter & Griswold, LLP  
1400 McDonald Investment Center  
800 Superior Avenue  
Cleveland, OH 44114-2688

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV 1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT CSX TRANSPORTATION, INC., A WHOLLY OWNED  
SUBSIDIARY OF CSX CORPORATION

Date: 08/31/05

H. R. Skip Elliott  
VP Public Safety & Environment  
CSX Transportation  
500 Water Street  
Jacksonville, FL 32202

Agent Authorized to Accept Service on Behalf of Above-signed Party:

CT Corporation System  
1300 East Ninth Street  
Suite 1010  
Cleveland, OH 44114

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT CURTISS-WRIGHT CORPORATION, ON  
BEHALF OF ITSELF AND ITS WHOLLY-OWNED SUBSIDIARY, THE  
MARQUETTE METAL PRODUCTS COMPANY

Date: August 30, 2005

\_\_\_\_\_  
Michael J. Denton  
Vice President, General Counsel and Secretary  
Curtiss-Wright Corporation  
4 Becker Farm Road  
Roseland, NJ 07068

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Michael J. Denton  
Vice President, General Counsel and Secretary  
Curtiss-Wright Corporation  
4 Becker Farm Road  
Roseland, NJ 07068

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT DAIMLERCHRYSLER CORPORATION

Date: 8/2/05

Kathleen M. Hennessey, Esq.  
Office of General Counsel  
DaimlerChrysler Corporation  
1000 Chrysler Drive  
Auburn Hills, MI 48326

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Kathleen M. Hennessey, Esq.  
Office of General Counsel  
DaimlerChrysler Corporation  
1000 Chrysler Drive  
Auburn Hills, MI 48326

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT EATON CORPORATION

Date: 9/19/05

\_\_\_\_\_  
Earl R. Franklin  
Vice President and Secretary  
Eaton Corporation  
1111 Superior Avenue  
Cleveland, OH 44114-2584

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Earl R. Franklin  
Vice President and Secretary  
Eaton Corporation  
1111 Superior Avenue  
Cleveland, OH 44114-2584

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT GATX CORPORATION

Date: 9-1-05

Ronald J. Ciancio  
Vice President and General Counsel  
GATX Corporation  
500 West Monroe Street  
Chicago, IL 60661

Agent Authorized to Accept Service on Behalf of Above-signed Party:

The Prentice-Hall Corporation System, Inc.  
33 N. LaSalle  
Chicago, IL 60602

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT GENERAL MOTORS CORPORATION

Date: Sept 9, 05

\_\_\_\_\_  
Michelle T. Fisher, Esq.  
General Motors Corporation  
300 Renaissance Center  
MC 482-C24-D24  
Detroit, MI 43265-3000

*its attorney*

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Michelle T. Fisher, Esq.  
General Motors Corporation  
300 Renaissance Center  
MC 482-C24-D24  
Detroit, MI 43265-3000

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT GIDDINGS & LEWIS, LLC, NOW KNOWN AS GLH, LLC

Date: Oct. 3, 2005

\_\_\_\_\_  
Stephen M. Peterson,  
President

Agent Authorized to Accept Service on Behalf of the Above-Signed Party

Lawrence C. Paulson  
Assistant General Counsel  
ThyssenKrupp USA, Inc.  
3155 West Big Beaver Road  
P.O. Box 5084  
Troy, Michigan 48007-5084

FOR SETTLING DEFENDANT G & L USA, LLC

Date: Oct. 3, 2005

\_\_\_\_\_  
Stephen M. Peterson,  
President

Agent Authorized to Accept Service on Behalf of the Above-Signed Party

Lawrence C. Paulson  
Assistant General Counsel  
ThyssenKrupp USA, Inc.  
155 West Big Beaver Road  
P.O. Box 5084  
Troy, Michigan 48007-5084

FOR SETTLING DEFENDANT GIDDINGS & LEWIS MACHINE TOOLS, LLC

Date: Oct. 3, 2005

\_\_\_\_\_  
Stephen M. Peterson,  
President

Agent Authorized to Accept Service on Behalf of the Above-Signed Party

Lawrence C. Paulson  
Assistant General Counsel  
ThyssenKrupp USA, Inc.  
3155 West Big Beaver Road  
P.O. Box 5084  
Troy, Michigan 48007-5084

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT HONEYWELL INTERNATIONAL INC., ON  
BEHALF OF WARNER SWASEY DIVISION OF BENDIX AUTOMATION,  
BENDIX CORPORATION, AND ALLIED SIGNAL, INC.

Date: 09/23/05

Troy J. Meyer  
Honeywell International Inc.  
101 Columbia Road  
Morristown, NJ 07962

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Brian D. Israel  
Arnold & Porter  
555 Twelfth Street, NW  
Washington, DC 20004-1202

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT LAFARGE NORTH AMERICA, INC., AS THE SUCCESSOR IN INTEREST TO GENERAL PORTLAND, INC.

Date: 8/31/08

Philip McClendon, Esq.  
Senior Vice President, Legal  
LaFarge North America Inc.  
12950 Worldgate Drive, Suite 500  
Herndon, VA 20170

Agent Authorized to Accept Service on Behalf of Above-signed Party:

David W. Carroll, Esq.  
Vice President, Environment  
LaFarge North America Inc.  
12950 Worldgate Drive, Suite 500  
Herndon, VA 20170

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT LEAR SIEGLER DIVERSIFIED HOLDINGS,  
AS THE SUCCESSOR IN INTEREST TO LEAR SIEGLER, INC.

Date: 5/1/05

James F. Matthews  
President  
Lear Siegler Diversified Holdings Corporation  
469 Morris Avenue  
Summit, NJ 07901-1565

Agent Authorized to Accept Service on Behalf of Above-signed Party:

James F. Matthews  
President  
Lear Siegler Diversified Holdings Corporation  
469 Morris Avenue  
Summit, NJ 07901-1565

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT MCNEIL & NRM, INC.

Date

9.20.05

Robert A. Nelson  
V.P. Finance  
McNeil & NRM, Inc.  
96 East Crosier Street  
Akron OH 44311

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Robert A. Nelson  
V.P. Finance  
McNeil & NRM, Inc.  
96 East Crosier Street  
Akron OH 44311

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT NAVISTAR INTERNATIONAL CORPORATION

Date: 8/26/05

\_\_\_\_\_  
Edith M. Ardienne, PE  
VP Environmental Affairs  
International Truck and Engine Corporation  
4201 Winfield Rd  
Warrenville, IL 60555

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Edith M. Ardienne, PE  
VP Environmental Affairs  
International Truck and Engine Corporation  
4201 Winfield Rd  
Warrenville, IL 60555

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT OWENS-ILLINOIS, INC.

Date: 8/30/05

\_\_\_\_\_  
Susan Smith, Esq.  
Owens-Illinois, Inc.  
One SeaGate 25-LDP  
Toledo, OH 43666

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Susan Smith, Esq.  
Owens-Illinois, Inc.  
One SeaGate 25-LDP  
Toledo, OH 43666

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT ROLLS-ROYCE NORTH AMERICA, INC.,  
AS THE SUCCESSOR IN INTEREST TO THE PARSON PEEBLES ELECTRIC  
COMPANY

Date: 30 August 2005

Thomas P. Dale, Esq.  
Executive Vice President & General Counsel  
Rolls-Royce North America Inc.  
14850 Conference Center Drive, Suite 100  
Chantilly, VA 20151

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Gregory S. Dunn, Esq.  
Legal Counsel  
Rolls-Royce North America Inc.  
2001 South Tibbs Avenue  
Indianapolis, IN 46241

**RECEIVED**

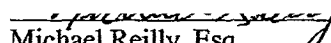
SEP 01 2005

**D.E. NASH**

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

FOR SETTLING DEFENDANT SPANG & COMPANY

Date: 8/30/05

  
Michael Reilly, Esq.  
Vice President & General Counsel  
Spang & Company  
111 Zeta Drive  
PO Box 11422  
Pittsburgh, PA 15238-0422

Agent Authorized to Accept Service on Behalf of Above-signed Party:

John Englert, Esq.  
Kirkpatrick & Lockhart Nicholson Graham, LLP  
Henry W. Oliver Bldg.  
535 Smithfield Street  
Pittsburgh, PA 15222-2312

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Summit Equipment & Supplies, Inc., et al.*, Civil Action 5:90CV1704, relating to the Summit Equipment & Supplies, Inc. Superfund Site.

**DEFENDANT**

FOR SETTLING VIACOM INC., SUCCESSOR BY *MERGER*  
WITH CBS CORPORATION, F/K/A WESTINGHOUSE  
ELECTRIC CORPORATION

Date: 8/30/05

*lak*  
*8/30/05*

Eric J. Sobczak

Vice President and Associate General Counsel  
Viacom Inc.

11 Stanwix Street, 2nd Floor  
Pittsburgh, PA 15222

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Kenneth K. Kilbert, Esq.  
Babst Calland Clements & Zomnir, PC  
Two Gateway Center, 8th Floor  
Pittsburgh, PA 15222

**APPENDIX A TO CONSENT DECREE:  
LIST OF SETTLING DEFENDANTS AND  
TOTAL PAYMENT OF RESPONSE COSTS**

**APPENDIX A**

<b>SETTLING DEFENDANT</b>	<b>PAYMENT TO EPA SUPERFUND</b>	<b>PAYMENT TO SUMMIT SPECIAL ACCOUNT</b>	<b>PREMIUM PAYMENT TO COVER RISKS FROM UNKNOWN CONDITIONS</b>	<b>TOTAL PAYMENT AMOUNT DUE WITHIN 30 DAYS OF ENTRY</b> <i>(except for the City of Cleveland, Ohio, for which the Total Payment Amount is due within 45 days of entry, as set forth in Paragraph 5 of this Consent Decree)</i>
ArvinMeritor, Inc., on behalf of Rockwell Standard Division of Rockwell International Corp.	\$15,319.53	\$26,316.00		\$41,635.53
Bridgestone/Firestone North American Tire, LLC	\$15,319.53	\$26,316.00		\$41,635.53
City of Cleveland, Ohio	\$327,586.00	\$26,316.00		\$353,902.00
Clark Equipment Co.	\$15,319.53	\$26,316.00		\$41,635.53
Cleveland Steel Container Corp.	\$15,319.53	\$26,316.00		\$41,635.53
CSX Transportation, Inc., a wholly-owned subsidiary of CSX Corp.	\$15,319.53	\$26,316.00		\$41,635.53
Curtiss-Wright Corp., on behalf of itself and its wholly-owned subsidiary, The Marquette Metal Products Co.	\$15,319.53	\$26,316.00		\$41,635.53

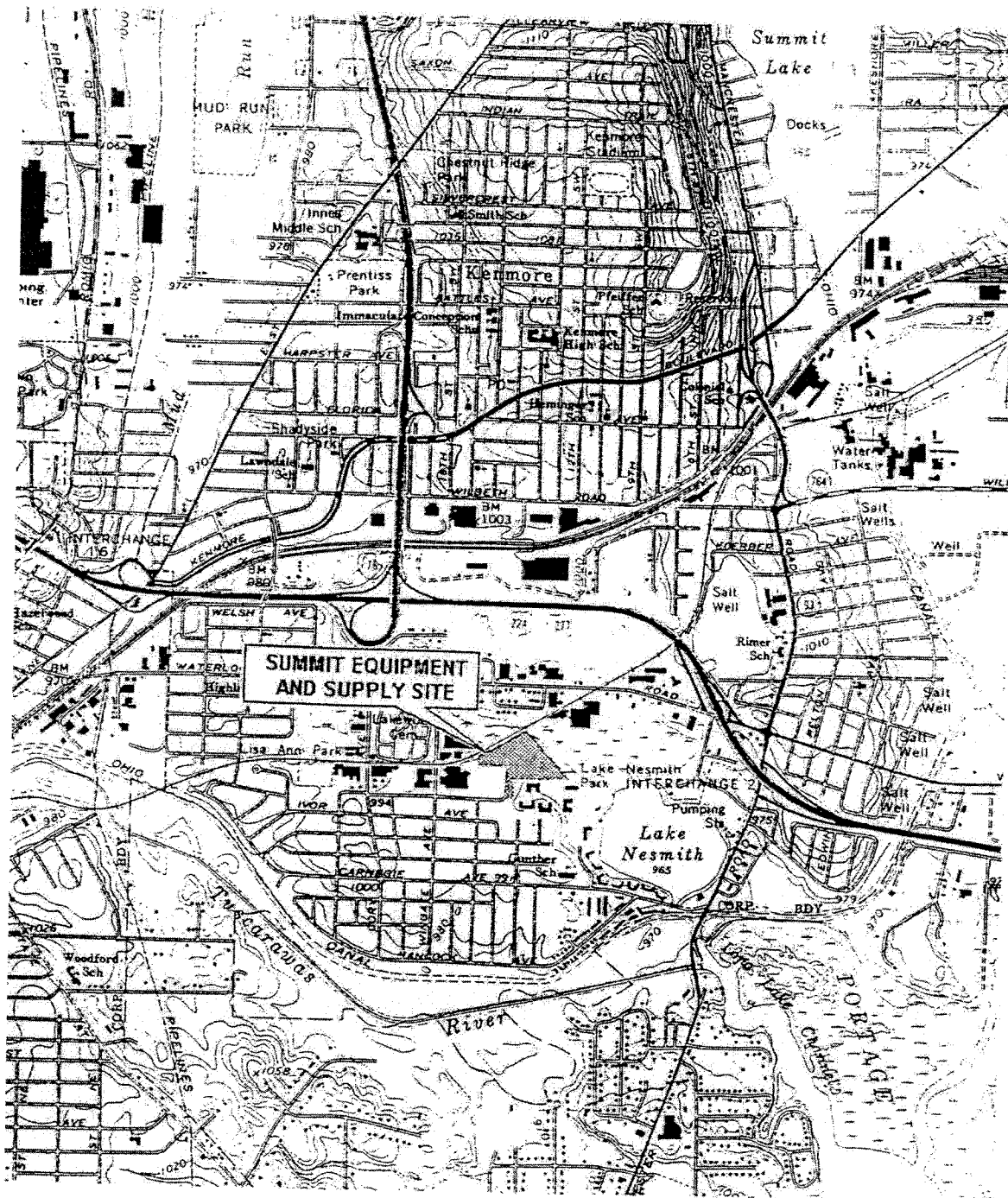
<b>SETTLING DEFENDANT</b>	<b>PAYMENT TO EPA SUPERFUND</b>	<b>PAYMENT TO SUMMIT SPECIAL ACCOUNT</b>	<b>PREMIUM PAYMENT TO COVER RISKS FROM UNKNOWN CONDITIONS</b>	<b>TOTAL PAYMENT AMOUNT DUE WITHIN 30 DAYS OF ENTRY</b> <i>(except for the City of Cleveland, Ohio, for which the Total Payment Amount is due within 45 days of entry, as set forth in Paragraph 5 of this Consent Decree)</i>
DaimlerChrysler Corp.	\$15,319.53	\$26,316.00		\$41,635.53
Eaton Corp.	\$15,319.53	\$26,316.00	\$10,408.88	\$52,044.41
GATX Corp.	\$15,319.53	\$26,316.00		\$41,635.53
General Motors Corp.	\$15,319.53	\$26,316.00		\$41,635.53
Giddings & Lewis, LLC, now known as GLH, LLC; G & L USA, LLC; and Giddings & Lewis Machine Tools, LLC, on behalf of themselves and the Warner & Swasey Division of Bendix Automation Company	\$7,659.77	\$13,158.00	\$5,204.44	\$26,022.21
Honeywell International, Inc., on behalf of Warner Swasey Division of Bendix Automation, Bendix Corp., and Allied Signal, Inc.	\$7,659.77	\$13,158.00	\$5,204.44	\$26,022.21
LaFarge North America, Inc., as the successor in interest to General Portland, Inc.	\$15,319.53	\$26,316.00	\$10,408.88	\$52,044.41

<b>SETTLING DEFENDANT</b>	<b>PAYMENT TO EPA SUPERFUND</b>	<b>PAYMENT TO SUMMIT SPECIAL ACCOUNT</b>	<b>PREMIUM PAYMENT TO COVER RISKS FROM UNKNOWN CONDITIONS</b>	<b>TOTAL PAYMENT AMOUNT DUE WITHIN 30 DAYS OF ENTRY</b> <i>(except for the City of Cleveland, Ohio, for which the Total Payment Amount is due within 45 days of entry, as set forth in Paragraph 5 of this Consent Decree)</i>
Lear Siegler Diversified Holdings, as the successor in interest to Lear Siegler, Inc.	\$15,319.53	\$26,316.00		\$41,635.53
McNeil & NRM, Inc.	\$15,319.53	\$26,316.00		\$41,635.53
Navistar International Corp.	\$74,799.00	\$26,316.00	\$25,278.75	\$126,393.75
Owens-Illinois, Inc.	\$74,799.00	\$26,316.00	\$25,278.75	\$126,393.75
Rolls-Royce North America Inc., as the successor in interest to the Parson Peebles Electric Co.	\$15,319.53	\$26,316.00	\$10,408.88	\$52,044.41
Spang & Company	\$15,319.53	\$26,316.00		\$41,635.53
Viacom Inc., successor by merger with CBS Corporation f/k/a Westinghouse Electric Corporation	\$15,319.53	\$26,316.00		\$41,635.53

**APPENDIX B TO CONSENT DECREE:  
MAP OF SITE**

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## APPENDIX B



Site Map

For Akron, Ohio